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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Mark G. Anderson Consultants

File: B-403250; B-403250.2

Date: October 7, 2010

Joseph D. West, Esq., Gibson, Dunn & Crutcher LLP, for the protester.
Wayne A. Keup, Esq., Wayne A. Keup, PLLC, for the intervenor.
George C. Brown, Esq., and Angela E. Clark, Esq., Securities and Exchange Commission, for the agency.
Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the agency's rejection of the protester's price quotation, as unacceptable, for the issuance of a blanket purchase agreement under a procurement conducted using the Federal Supply Schedule is denied, where protester's technical quotation identified subcontractors that the protester would use to perform tasks but failed to submit information required by the solicitation regarding subcontractor or teaming arrangements with those vendors.

DECISION

Mark G. Anderson Consultants, of Washington, D.C., protests the issuance of a blanket purchase agreement (BPA) to Fox RPM Corp., of Washington, D.C., under request for quotations (RFQ) No. SECHQ1-10-Q-0039, issued by the Securities and Exchange Commission (SEC) for comprehensive furniture management services.

We deny the protest.

BACKGROUND

The RFQ, issued on May 12, 2010, provided for the award of a fixed-price BPA for the purchase, delivery, installation, and warranty of furniture, furnishings, and equipment. Vendors were informed that the competition was being conducted under Federal Acquisition Regulation (FAR) subpart 8.4 and was limited to vendors holding Federal Supply Schedule (FSS) contracts under Schedule 71 II K, comprehensive furniture management services.

A detailed statement of work (SOW) was provided, which described 18 tasks that the vendor would provide. For example, vendors would provide “BPA order management services” to help the agency procure selected products through the FSS (task 3); “Move Coordination Services,” to solicit quotations and select a moving company (task 10); and “Coordination of Equipment, Accessories, Art, Signage,” to, among other things, procure flags, artwork, and prints by issuing orders from FSS vendors or other sources as identified by the SEC (task 13). SOW at 2-3, 5-6, 8-9.

The RFQ also included task order No. 1 for the Phase 1, third floor expansion of SEC’s headquarters. RFQ, encl. 3. For this task order, vendors were provided a technical drawing of the third floor furnishing plan and a detailed list of furniture specifications, including manufacturers and quantities, for chairs, conference tables, storage cabinets, shelving units, workstations, and other furnishings. The RFQ also provided specifications and guidelines for the selection, procurement, and placement of flags, seals, signage, portraits, and artwork. Vendors were informed that delivery and installation for the first task order was required by August 15, 2010. Vendors were also informed that the SEC would place future orders, and provide specifications, for the remaining renovation phases at the agency’s headquarters and regional offices through March 2016.

Vendors were required to submit both price and technical quotations;¹ vendors were also apprised that the resulting BPA would be issued on a best value basis, considering price and the following non-price factors, listed in descending order of importance: technical approach and understanding; management approach and capabilities; and past performance. RFQ at 5. When combined, the non-price factors were stated to be significantly more important than price. The RFQ stated that the agency would evaluate price quotations against the agency’s estimated level of effort and that vendors should “propose fixed unit prices that are both realistic and reasonable.” Id. at 6.

With respect to the technical quotations, vendors were instructed, to among other things, provide a project management plan that described the vendor’s project personnel and any proposed subcontracting arrangements, and to identify its labor mix to perform contract tasks and produce any deliverables. RFQ at 3.

In their price quotations, vendors were instructed to provide a fixed price from their FSS contract for the first task order, and were informed that they must provide fixed hourly rates for all labor categories and that other direct costs (ODC) would be cost-reimbursable items. RFQ at 4. Vendors were encouraged to offer discounts off their FSS rates and identify any discounts offered. The RFQ also required vendors to

¹ We note that, although the agency is using an RFQ for this procurement, it essentially has requested price and technical proposals.

provide documentation of subcontractor or teaming partner arrangements. In this regard, the RFQ provided:

If a teaming arrangement is proposed, each teaming partner shall provide a copy of their applicable FSS Schedule Contract to substantiate the rates offered. If subcontracting is proposed, all labor and materials proposed must be contained within the prime contractor's FSS Schedule Contract. Furthermore, the prime contractor shall disclose to the [contracting officer] a copy of the subcontract pricing, terms and conditions, or teaming agreement Failure to provide complete supporting documentation may result in no further consideration of the [vendor's quotation].

Id.

The SEC received seven quotations, including Anderson's and Fox's. Technical quotations were evaluated by the technical evaluation board (TEB). Contracting Officer's Statement at 1-2; see Agency Report (AR), Tab 8, TEB Consensus Ratings. Anderson's and Fox's technical quotations were both evaluated as being "exceptional."² Contracting Officer's Statement at 1.

The vendors' price quotations were evaluated by the contract specialist. AR, Tab 9, Price Reasonableness Determination. She evaluated price quotations by comparing vendors' proposed labor hours and rates for various positions relative to other vendors and the government estimate; total service prices; and total furniture, furnishings, and equipment prices. With respect to price realism, the contract specialist considered pricing and cost information, such as labor rates; subcontracting or teaming arrangements; discounts, if any; the extent to which various tasks and products were priced; ODCs; and any additional break-out or supporting documentation included with the vendor's price quotation.

Anderson's price quotation, which was the second-lowest priced for task order 1, was found unrealistic and unacceptable.³ The contract specialist found that Anderson did not provide any break-out or supporting documentation and no teaming or subcontracting agreement even though Anderson's technical quotation

² The TEB rated technical quotations as exceptional, acceptable, marginal, unacceptable, or neutral. AR, Tab 8, Consensus TEB Rating. Anderson does not challenge the evaluation of Fox's technical quotation.

³ Price quotations were rated as acceptable, marginal, or unacceptable.

stated that the vendor would subcontract some of the work.⁴ Id. In this regard, Anderson's technical quotation included "Proposed Subcontracting Arrangements," which identified companies that Anderson had selected to perform various tasks under the BPA. Anderson's Technical Quotation at 24-25.

The contract specialist found Fox's quotation to be comprehensive, complete and realistic.⁵ In this regard, she also noted the inclusion of a teaming arrangement agreement. Fox's price quotation, which was the highest priced, was determined to be acceptable. Id. at 1.

The contract specialist provided the TEB with the results of her price evaluations and analyses, and the TEB recommended that the BPA be issued to Fox. The BPA was issued to Fox, and this protest followed.

DISCUSSION

The protester complains that its price quotation should not have been found unacceptable for failing to provide documentation concerning subcontractors, because Anderson did not propose using a subcontracting or teaming arrangement. See Protest at 4. According to the protester, references to subcontractors, vendors, or partners in its technical quotation merely reflect the firm's intent to use, prospectively, SEC-selected vendors during performance under the BPA. Response to Request for Dismissal at 3. In this regard, the protester cites SOW tasks that require the contractor to assist the agency in selecting vendors and procuring goods and services, including purchases that require prior agency approval. Id., citing SOW at 2-13. In the protester's view, the RFQ clause requiring documentation for subcontractor/teaming arrangements should not be read to require vendors to submit pricing information for suppliers that could only be selected in performance of task orders under the BPA. Comments at 3-4; Supp. Comments at 2. Rather, the protester believes that, read in the context of the SOW, the subcontractor/teaming arrangements clause was only directed at vendors who intended to rely on such

⁴ Anderson's entire price quotation consisted of three documents: an executed Standard Form 18--Request for Quotation; Anderson's FSS labor rates for 4 personnel categories; and a document entitled "Fannie Mae Financial Scorecard." Protester's Price Quotation at 1-14.

⁵ Fox's price quotation lists total furniture quantities and prices by manufacturer; total prices for art and miscellaneous items; and Fox's proposed installation and overhead prices, including its proposed subcontractor's "coefficient" or percentage. Fox's price quotation also lists proposed labor hours and rates by personnel positions (including subcontractor positions) according to each of the 18 tasks and various subtasks identified in the SOW, as well as ODCs for Phase 1 and annual labor prices for each Fox personnel position for the five-year ordering period.

arrangements to provide management services. Moreover, Anderson argues, the clause should not be read to require pricing information from other FSS vendors who had already provided such information to the General Services Administration (GSA). Anderson also notes that this pricing information already appears on those vendors' FSS contracts.

The agency responds that the protester's technical quotation indicates that Anderson would not perform all the SOW tasks itself, given that the quotation specified companies that the vendor had selected and intended to use for furniture installation and other tasks. See Legal Memorandum at 9-11. In this regard, the SEC notes that vendors were required to provide quotations and identify what resources they would be using to perform the first task order. See id. at 11. The agency contends that, because Anderson indicated that it would use other companies to perform certain tasks, the RFQ required that the firm include its subcontract pricing, terms, and conditions, or teaming arrangement with those companies in its quotation, which Anderson did not.

When an agency conducts a formal competition under the FSS program, we will review the agency's evaluation of vendor submissions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. SI Int'l, SEIT, Inc., B-297381.5; B-297381.6, July 19, 2006, 2006 ¶ CPD 114 at 11. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that reasonably gives effect to all its provisions. Solec Corp., B-299266, Mar. 5, 2007, 2007 CPD ¶ 42 at 2. We will not read a provision restrictively where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. XTec, Inc., B-299744.2, B-299744.3, Aug. 6, 2007, 2007 CPD ¶ 148 at 11.

Here, contrary to Anderson's arguments, the firm's quotation states that it had "selected" specific companies for furniture installation and other tasks under the BPA. See Protester's Technical Quotation at 24-25. In this regard, vendors were required to submit documentation and pricing data for subcontractor/teaming arrangements and warned that failure to do so may result in no further consideration of their quotation. RFQ at 4. Vendors's project management plans were also required to clearly describe any proposed subcontracting arrangements and identify the labor mix required to conduct the tasks and produce any deliverables. Id. at 3. Because Anderson's quotation identified specific companies that would perform tasks under the SOW, we find that the protester was required by the terms of the

RFQ to submit necessary supporting documentation or clearly describe its proposed arrangement with those companies.⁶

With respect to Anderson's complaint that its price quotation should not have been found unrealistic, we find the agency's determination to be reasonable, because the SEC found that Anderson's price quotation omitted significant cost elements and necessary documentation, such as information about its intended subcontractors.⁷

When an agency issues an RFQ to vendors holding FSS contracts for the delivery of services at hourly rates, and, as here, a statement of work is included, the ordering agency must evaluate the quotations received consistent with the stated evaluation criteria. FAR § 8.405-2(d). As part of its evaluation, the agency is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered and for determining that the total price is reasonable. See id.; see, e.g., Advanced Tech. Sys., Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151 at 9-10. Moreover, where a solicitation provides for the award of a fixed-price contract, or a fixed-price portion of a contract, an agency may provide for the use of a price realism analysis for the limited purpose of measuring a vendor's understanding of the requirements or to assess the risk inherent in a vendor's quotation. See Ball Aerospace & Tech. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. The nature and extent of such a price realism analysis ultimately are matters within the sound exercise of the agency's discretion, and our review of such an evaluation is limited to determining whether it was reasonable and consistent with the solicitation's evaluation criteria. World Wide Tech., Inc., B-298888, Dec. 1, 2006, 2006 CPD ¶ 189 at 5-6; PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5.

Here, Anderson's price quotation provided only an overall fixed price and its FSS labor rates for four labor categories, but did not provide any description or detail of the elements that made up its overall price; without such detail, the agency could not determine whether Anderson proposed discounts against its FSS contract labor rates

⁶ To extent that the protester believes that the RFQ was ambiguous with regard to subcontractor/teaming arrangements, this protest ground is untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1) (2010). See, e.g., OLCR Inc.; Revolutionize, B-401575, B-401575.2, Sept. 24, 2009, 2009 CPD 189 at 4.

⁷ We requested GSA's views regarding the agency's realism analysis and allowed the parties to comment on GSA's views. Among other things, GSA stated that, although FSS prices are determined to be fair and reasonable at the GSA contract level, an ordering activity seeking further discounts may provide for a realism analysis to assess risk of performance by a vendor offering an unrealistically low price. See GSA Comments at 1-2.

or consider Anderson's level of effort and the proposed labor mix.⁸ Accordingly, we find that the agency reasonably determined that Anderson's price quotation was unrealistic.

Anderson also protests the SEC's evaluation of Fox' price quotation as reasonable and realistic, arguing that Fox failed to provide its teaming partner's FSS contract. Supp. Protest at 6-13. Anderson also argues that, if Fox intended a prime/subcontractor relationship rather than a teaming partnership, then the awardee failed to submit a copy of its subcontract pricing, terms, and conditions as required by the RFQ. In this regard, the protester contends that the awardee's proposed arrangement was ambiguous because it is entitled a "teaming agreement" but refers to the parties as "prime" and "subcontractor." See Supp. Comments at 4. The protester also argues that the record provides no documentation that the agency evaluated the acceptability of Fox's teaming agreement.

The agency responds that Fox's quotation, unlike Anderson's, provided its subcontractor's price percentage; lists tasks that the subcontractor would perform; and specified subcontractor labor rates that were consistent with Fox's FSS contract. See Supp. AR at 6.

We find from our review of the record no basis to object to the SEC's determination that Fox's price quotation was reasonable and realistic. In this regard, although entitled a "teaming agreement," Fox's agreement clearly envisions a prime/subcontractor relationship and consistently refers to the parties as such. See Awardee's Teaming Agreement at 1-8; see, e.g., GZA Remediation, Inc., B-272386, Oct. 3, 1996, 96-2 CPD ¶ 155, at 5 n. 2 (proposal's reference to teaming arrangement does not change subcontractor's status or fact that offeror was prime contractor). The record also shows that Fox's price quotation identified its subcontractor's price percentage; specific tasks to be performed by the subcontractor, including by personnel positions; and the subcontractor's personnel hours and labor rates. See Awardee's Price Quotation at 5-7. The agency's price evaluation, which consists of the contract specialist's notes, narrative summaries, and comparison of proposed labor hours and rates for various positions relative to other vendors and the government estimate, documents the agency's comparison of vendors's proposed labor rates; subcontracting or teaming arrangements; discounts; various tasks and products identified; ODCs; and other break-out or supporting documentation provided by vendors. See AR, Tab 9, Price Reasonableness Determination. Although

⁸ The Contracting Officer states that during the debriefing following the issuance of the BPA to Fox, Anderson indicated that its quotation price was low because the firm had significantly discounted its FSS labor rates. See Contracting Officer's Statement at 3. Anderson's quotation did not indicate that the firm was discounting its FSS contract labor rates.

Anderson apparently disagrees with the agency's judgment in this regard, its disagreement does not demonstrate that the agency acted unreasonably.

The protest is denied.

Lynn H. Gibson
Acting General Counsel